

**REMARKS**

Entry of the foregoing amendments is respectfully requested.

**Summary of Amendments**

By the foregoing amendments independent claims 1 and 3-11 are cancelled and claims 12-38 are added, whereby claims 12-38 are pending. Claims 12, 23 and 31 are independent claims.

Support for the new claims can be found throughout the present specification and in particular, pages 4 to 10 thereof.

**Summary of Office Action**

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed August 27, 2003 and May 2, 2006 by returning a signed and initialed copy of the Forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f) and the receipt of a certified copy of the priority document in parent Application No. 09/622,090.

Claims 1 and 3-11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

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Claims 1, 3, 5, 7 and 9 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Amalric et al., WO 95/13863 A (hereafter "AMALRIC").

Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Hansenne, U.S. Patent No. 5,679,656 (hereafter "HANSENNE"), as further understood by Brancq et al., WO 92/06778 (with the English language equivalent, U.S. Patent No. 5,958,431 to Brancq et al. (hereafter "BRANCQ").

Claims 1, 3 and 5-9 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over AMALRIC in view of BRANCQ.

#### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

#### ***Response to Rejection under 35 U.S.C. § 112, Second Paragraph***

Claims 1 and 3-11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner takes the position that the phrase "esterified with four or less fatty acid residues" recited in claim 1 is confusing in that it does not have a lower limit for the number of fatty acid residues and that claim 10 is inconsistent with claim 1.

Applicants respectfully submit that this rejection is moot in that none of claims 12-38 submitted herewith recites the phrase "esterified with four or less fatty acid residues" and that there is no inconsistency between any of claims 12-38.

***Response to Rejection of Claims under 35 U.S.C. § 102(b) over AMALRIC***

Claims 1, 3, 5, 7 and 9 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by AMALRIC. The rejection relies on the composition according to Examples 3 and 5 of AMALRIC, which composition allegedly comprises octadecyl glucoside, octadecanol, 1 to 5 % of oil, water and Acrysol 22 (acrylate/steareth-20 methacrylate copolymer). The rejection also relies on Example 6 of AMALRIC which discloses glycerol triheptanoate as oil component of an O/W emulsion which further comprises the concentrate of Example 1 and Carbomer 941, an acrylic copolymer.

Applicants respectfully disagree with the Examiner that AMALRIC anticipates cancelled claims 1, 3, 5, 7 and 9 but refrain from commenting on this rejection because it is even more apparent that the new claims submitted herewith are not anticipated by AMALRIC.

For example, present independent claim 12 recites, *inter alia*, that the preparation comprises one or more surface-active substances selected from disaccharides which are esterified with one or more fatty acid residues. AMALRIC does not appear to even mention esterified disaccharides, let alone surface-active esterified disaccharides, and for this reason alone, is not anticipated by AMALRIC.

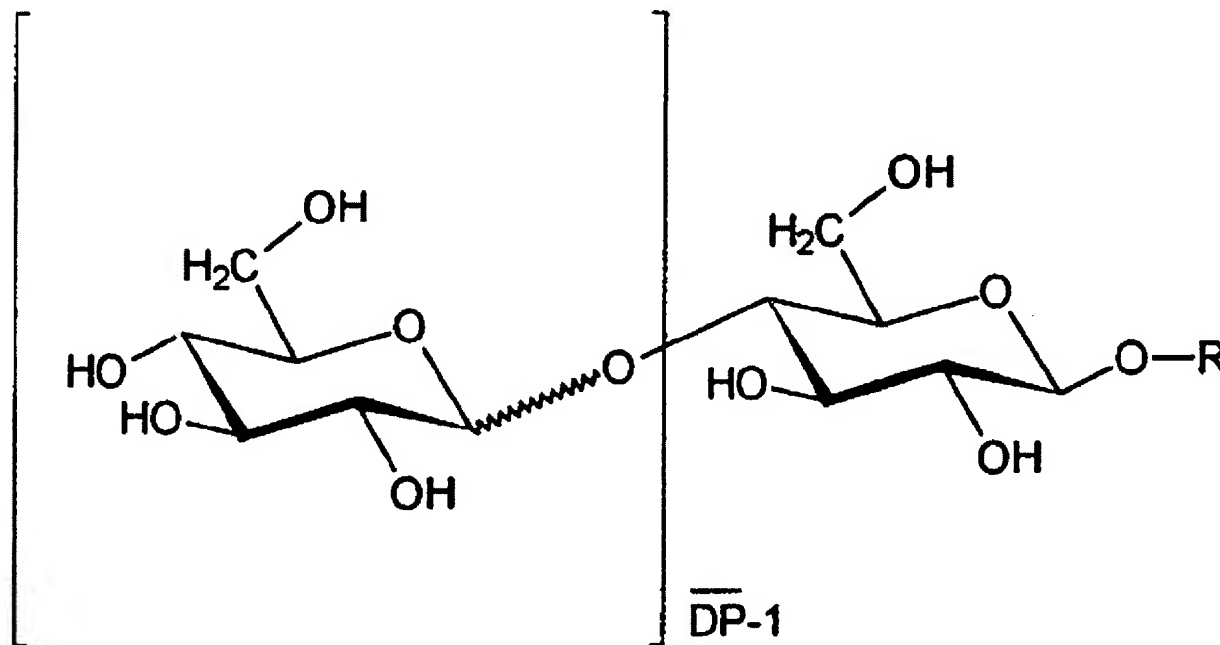
Independent claim 23 recites *inter alia*, that the preparation comprises one or more surface-active substances selected from glycerol esters of saturated or unsaturated fatty acids and glycol esters of saturated or unsaturated fatty acids. AMALRIC does not appear to teach or suggest corresponding compounds. Applicants note that the glycerol triheptanoate listed in Table IV of AMALRIC and pointed out by the Examiner is identified in AMALRIC as the oil phase of an O/W emulsion, i.e., not as a surface-active substance.

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At any rate, an alkanecarboxylic acid trierster of glycerol qualifies as a lipid (fat), not as a surface-active substance. In this regard, Applicants also note that the present specification states that the glycerol esters of saturated or unsaturated fatty acids can advantageously be chosen from the group of glyceryl monoesters of monobasic fatty acids having from 8 to 30 carbon atoms on the average (page 3, third paragraph).

For at least all of the foregoing reasons, AMALRIC does not anticipate the subject matter of claim 23 and any of the claims dependent therefrom.

Independent claim 31 recites *inter alia*, that the preparation comprises one or more surface-active substances selected from alkyl glucosides of formula



wherein R comprises at least one of myristyl, cetyl, stearyl, eicosyl, arachidyl and behenyl radicals and DP represents an average degree of glucosylation of up to 2; and disaccharides which are esterified with one or more fatty acid residues.

As already pointed out above with respect to claim 12, AMALRIC does not appear

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to disclose esterified disaccharides, let alone surface-active esterified disaccharides.

Regarding alkyl glucosides, AMALRIC does not appear to disclose that the alkyl polyglucosides employed in Examples 3 and 5 thereof have an average degree of glucosylation of up to (not more than) 2. For the foregoing reasons alone, AMALRIC fails to anticipate the subject matter of claim 31 and any of the claims dependent therefrom as well.

***Response to Rejection of Claims under 35 U.S.C. § 102(b) over HANSENNE***

Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by HANSENNE, as further understood by BRANCQ. This rejection is based on the composition of Example 1 of HANSENNE which allegedly has a lipid content of 0 %, is comprised of MONTANOV 68, an alkylpolysaccharide/fatty alcohol mixture, and contains water.

Applicants respectfully disagree with the Examiner that Example 1 of HANSENNE anticipates cancelled claims 1 and 6. For example, contrary to what is alleged in the present Office Action, the composition of Example 1 of HANSENNE does contain a lipid, i.e., 10 % of silicone oil (component (a) of Phase A, see col. 6, line 2 of HANSENNE). In this regard, it is noted that several of the examples of the present application also comprise a silicone oil such as cyclomethicone or dimethicone as the lipid phase of the corresponding preparation or a part thereof (see, e.g., Examples 6-8 and 10). Cancelled independent claim 1, on the other hand, recites that the preparations claimed therein comprise 0 to 5 % by weight of a lipid phase, i.e., (significantly) less than the 10 % disclosed in Example 1 of HANSENNE.

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Independent claims 12, 23 and 31 submitted herewith also recite that the preparations claimed therein comprise 0 to 5 (3) % by weight of a lipid phase. For this reason alone, HANSENNE fails to anticipate the subject matter of any of the claims submitted herewith.

***Response to Rejection of Claims under 35 U.S.C. § 103(a)***

Claims 1, 3 and 5-9 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over AMALRIC in view of BRANCQ. The rejection alleges that AMALRIC teaches each and every element of the rejected claims with the exception of cetylstearyl alcohol and sucrose esters.

Applicants respectfully disagree with the Examiner in this regard as well, but refrain from commenting on the corresponding allegations because all of the rejected claims are cancelled.

As pointed out above, present independent claims 12, 23 and 31 are not anticipated by AMALRIC for various reasons. It is not seen that BRANCQ cures the deficiencies of AMALRIC in this regard.

For example, it is not seen that BRANCQ teaches or suggests the surface-active disaccharides which are esterified with one or more fatty acid residues recited in claims 12 and 31, the surface-active glycerol esters of saturated or unsaturated fatty acids and glycol esters of saturated or unsaturated fatty acids recited in claims 12 and 23 or the alkyl glucosides having an average degree of glucosylation of up to (not more than) 2 recited in claim 31.

Further, it is not seen that there is any motivation for one of ordinary skill in the art to

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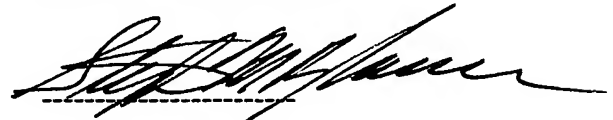
replace the alkyl polyglucoside/alkanol mixtures used in the compositions of AMALRIC by e.g., the cetearyl glucoside/cetystearyl alcohol mixture of Example 1 of BRANCQ. For example, AMALRIC expressly requires the presence of at least two different alkyl (poly)glycosides, one of which being a C<sub>8-15</sub> alkyl (poly)glycoside (see, e.g., claim 1 of AMALRIC). The cetearyl glucoside of BRANCQ apparently does not fall within this definition (cetyl is a C<sub>16</sub> alkyl group and stearyl is a C<sub>18</sub> alkyl group).

Applicants respectfully submit that for at least all of the foregoing reasons, even a combination of AMALRIC and BRANCQ does not render it obvious to provide the subject matter of any of the claims submitted herewith, wherefore a rejection of these claims over under 35 U.S.C. § 103(a) over AMALRIC in view of BRANCQ would be without merit.

### CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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